

MEMORANDUM FOR RONALD POUSSARD

DIRECTOR

DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

RODNEY P. LANTIER

DIRECTOR

REGULATORY SECRETARIAT AND FEDERAL ASSISTANCE  
PUBLICATIONS DIVISION

SUBJECT:

Contract Closeout

*(Consolidated list.)*

Attached are late comments received on the subject FAR case published at 67 FR 59799; September 24, 2002.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
ANPR-1	10/03/02	10/03/02	Craig Thompson
ANPR-2	10/04/02	10/04/02	Bob L. Wilson
ANPR-3	10/04/02	10/04/02	Christopher Smallis
ANPR-4	10/08/02	10/08/02	Ronald Regalado
ANPR-5	10/15/02	10/15/02	Richard Colclough
ANPR-6	10/16/02	10/16/02	Martha L. Mitchem
ANPR-7	10/18/02	10/18/02	Mel Vogt
ANPR-8	10/08/02	10/08/02	Kandi A. McDonald
ANPR-9	11/06/02	10/28/02	Thomas R. Love
ANPR-10	11/18/02	11/18/02	Pam Burton
ANPR-11	11/21/02	11/21/02	Lena Y. Bowie
ANPR-12	12/02/02	11/21/02	DOD/IG

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
ANPR-13	11/25/02	11/25/02	CODSIA
ANPR-14	11/25/02	11/25/02	AIA
ANPR-15	11/25/02	11/25/02	Pamela Casey
ANPR-16	11/25/02	11/25/02	Ben Sottile and
ANPR-17	11/25/02	11/25/02	Daniel Fleischman
ANPR-18	11/25/02	11/25/02	Michael Walker
ANPR-19	11/26/02	12/26/02	Vivian Hill
ANPR-20	11/26/02	11/26/02	Jennifer Norling
ANPR-21	11/26/02	11/26/02	Diane Street
ANPR-22	11/16/02	11/16/02	Samuel Davis
ANPR-23	01/29/03	01/29/03	Steven Cohen
ANPR-24	01/29/03	01/29/03	Pat Janik
Attachments			

ANPR-1



"Thompson, Craig"  
<crthompson@dcmde.  
dcma.mil>

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>

cc:

Subject: ANPR contract closeout docket 02-24173

10/03/2002 11:34 AM

Good Morning. Many individual orders are issued against a basic contract. Instead of clearing Government Property, a Final Patent Report, a Security Release, etc. on each individual delivery order (burdensome and time consuming processes), I recommend these be cleared once against the basic contract. All the orders should be closed without impediment. Thank you.

Craig Thompson  
Contract Administrator  
DCMA Manassas Contract Closeout Team  
703-330-3202 X373  
fax 703-330-3249

ANPR-2



"Wilson, Bob L."  
<Bob.L.Wilson@ssa.gov>  
ov>

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc:  
Subject: ANPR Contract Closeout

10/04/2002 11:27 AM

Date: October 4, 2002  
To: FAR Secretariat ATTN: Laurie Duarte  
From: Office of Acquisition and Grants, Social Security Administration  
Subject: ANPR Contract Closeout

In response to the Advance Notice of Proposed Rulemaking published in the Federal Register on 9/24/2002 (page 59799) the Office of Acquisition and Grants, Social Security Administration, submits the following comments related to possible FAR revisions that could be made to facilitate timely contract closeout. Please note that our comments relate specifically to the closeout of cost-type contracts. We have not experienced significant problems related to the timely closeout of fixed-price contracts.

It has been our experience that the contract closeout process associated with cost-type contracts is typically delayed due to either late submission of contractor incurred cost proposals or delays associated with receipt of final contract audits.

#### 1. Late Submission of Final Indirect Rate Proposals

Our experience with the contract closeout process has been that contractors rarely comply with the requirement for timely submission of indirect cost rate proposals. Considering that contractors regularly submit annual financial statements and annual tax returns in a timely manner, we believe that submission of indirect cost rate proposals is simply a low priority for many contractors. In fact, unless the contractor is due additional monies at final payment, or has some other incentive to participate in the closeout process, contractors may elect not to participate at all.

To encourage timely submittal of incurred cost proposals, one possible option is to increase the amount of fee that can be held in reserve by the contracting officer per FAR Clause 52.216-8 Fixed Fee. For example, allowing the contracting officer to withhold 15% of the fixed-fee or \$100,000, whichever is more, would provide additional cost incentives for the contractor to be timely with regard to meeting its closeout obligations.

#### 2. Delays Awaiting Final Audit

The contract closeout process can also be delayed awaiting final audit. In some cases audit resources are scarce, funding is limited, or audit reports are delayed based on the audit organization's decision to audit multiple years at one time. Also, in the case of non-profits, A-133 audits frequently do not provide the necessary direct cost information to close contracts.

#### 3. Speeding Up the Process

Obviously, eliminating the requirement to use final indirect cost rates for contract closeout (FAR 42.703-1) in combination with eliminating the final field audit would greatly speed up the contract closeout process. Although elimination of these steps would significantly increase the cost risk to the Government, we believe that a business case could be made for doing the following on a case-by-case basis:

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Case 1 - Where a thorough analysis of indirect rates has been performed prior to award, and where it can be clearly shown that proposed rates are realistic, the contracting officer and the contractor may negotiate into the contract fixed rates applicable to each contractor fiscal year. These fixed rates would apply only to this contract, would not be subject to redetermination, and would be used for contract closeout purposes without waiting for the establishment of final indirect rates.

Case 2 - Place a special provision/clause in the contract providing for the conversion of provisional billing rates to fixed rates at any time after award and by the mutual agreement of both parties. Conversion would occur after a substantial period of contract performance has passed and where it can be reasonably shown that such fixed rates are realistic.

Case 3 - Establish preliminary final rates for those contractors that have a historical record of final rate negotiations. Preliminary final rates would be based on proposed (unaudited) final rates for a given year reduced by a decrement factor to reflect past disallowances negotiated as part of the final rate determination process. Preliminary final rates could then be used at closeout for those years where final rates have not yet been established.

Case 4 - Where contracts contain indirect ceiling rates, and where it can be clearly shown that projected final indirect rates are unlikely to be less than these ceiling rates, use ceiling rates for contract closeout purposes.

With respect to final audit, agencies currently have the flexibility to determine the dollar threshold for final audit. For example, a typical threshold might be the dollar threshold for certified cost or pricing data. All cost-type contracts exceeding the cost data threshold are closed based on a field audit. Those contracts valued below the threshold are closed based on a desk audit.

We believe agencies should work with their Office of Inspector General to determine cost risk associated with closeout audits. Where cost risk is minimal (low dollar contracts) only desk audits should be performed. Where contract dollars are significant, and where regular audits are being performed in a timely manner, the standard should be that contracts are closed based on these audits.

In our view, it is important that contracting officers retain the right to request an audit whenever circumstances dictate. It is imperative, in this era of corporate fraud, greed and improper accounting practices, that we provide continuing assurance to taxpayers that contract expenditures are being properly monitored by Government officials. This means that taxpayer dollars are only being used to reimburse contractors for reasonable, allowable, and allocable contract costs. It also means that contract funds are being expended consistent with applicable laws and regulations and the intent of Congress.

Questions related to this response should be directed to Bob Wilson at 410-966-6702, or e-mail at [Bob.L.Wilson@ssa.gov](mailto:Bob.L.Wilson@ssa.gov).

ANPR-3



"Smallis Christopher  
Civ ESC/NDM"  
<Christopher.Smallis@  
hanscom.af.mil>

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>

cc:  
Subject: Comments on Contract Closeout

10/04/2002 01:42 PM

In my 17+ years of experience in DOD systems contracting, I have noticed that the easiest contracts to close out are the FFP contracts of short duration; followed by FFP of longer duration (3-5 yrs); followed by incentive contracts; followed by cost contracts with the private sector, who probably bring up the rear.

No mystery here. The reason these take so long is that companies know that final indirect rates nearly always result with some form of Government payback. Sometimes they budget for this, sometimes they don't. Sometimes the payback may be small, and sometimes it could amount to millions.

To them, it's much less expensive to just carry these contracts open after physical completion than to attempt to renegotiate final indirect rates. And for those companies that have gone through a series of mergers or acquisitions while holding large dollar cost contracts of long periods of performance, the process of indirect cost apportionments and allocations can add months and months of delay before the company and the Government can even begin to negotiate final rates.

Is the cost of all this administrative burden really worth it? Are we getting back amounts that offset the costs associated with our being able to keep these contracts open and negotiating final rates? Coming to agreement on rates can alone take months, if not years, and in the case of major defense contractors, can sometimes end up being reached only through arbitration or through the DOJ.

I believe it's time to end this madness. I propose that cost contracts that use FPRAs should be able to close out at physical completion, dispensation of GFP and classified, and resolution of any outstanding subcontractor issues. If FPRAs, proficiently negotiated, are acceptable enough to start work, then I believe they would be acceptable enough as a basis of "final pricing" at the completion of work. I further believe that such a rule would incentivize more contractors to negotiate FPRAs, if only to avoid the comparatively painful rates renegotiation at contract completion.

I know of no one in my experience who has ever looked forward to closing out any contract, and least of all a cost contract. When we do eventually get around to them, oftentimes the experienced people most familiar with the details at the time costs were incurred may have moved on, leaving the Government to negotiate from a position of relative weakness. There's a cost to the Government for this in having to staff for this delay. I further believe there is a cost we continually pay to contracts via active contracts that are attributable to their having to keep a repricing activity around.

Christopher Smallis  
ESC/NGM  
11 Eglin Street  
Hanscom AFB, MA 01731  
781-377-5418 (DSN 478)

"The secret to managing is to keep those guys who hate you away from those who are undecided" - Casey Stengel



"Regalado, Ronald E."  
<REGALRO2@mail.northgrum.com>

10/08/2002 01:38 PM

ANPR-4

To: "Jacklets, Pat" <Pat.Jacklets@NorthropGrumman.com>, "Avetissian, Vic" <avetivi@mail.northgrum.com>, "Creel, Helen M (Ship Systems)" <hmcree@northropgrumman.com>, "Decedue, Don (Ship Systems)" <DADECEDUE@northropgrumman.com>, "Dieter, James" <JDieter@Northropgrumman.com>, "Duckworth, Steven D." <sduckworth@northropgrumman.com>, "Evans, Earl" <EVANSEA@mail.northgrum.com>, "Lassiter, Debbie B." <lassiter\_db@nns.com>, "Meade, Marcia S." <meade\_ms@nns.com>, "Norman, Wayne" <NORMAWA@mail.northgrum.com>, "Tisone, Patricia" <TISONPA@mail.northgrum.com>  
cc: "Pittman, Carolyn K." <PITTMCA@mail.northgrum.com>, "Auffrey, Larry" <AUFFRLA@mail.northgrum.com>, "Keen, Richard" <Richard.Keen@NorthropGrumman.com>, "Lee, Harry Q. II" <LEEHA@mail.northgrum.com>, "Haslett, Bill F." <HASLEBI@mail.northgrum.com>, "craig.curtis@osd.mil" <craig.curtis@osd.mil>, "ANPR.contractcloseout@gsa.gov" <ANPR.contractcloseout@gsa.gov>, "Vaughn, Virginia A." <VAUGHVI@mail.northgrum.com>, "Henson, Veronica" <HENSOVE@mail.northgrum.com>, "Sentz, Raymond" <SENTZRA@mail.northgrum.com>, "Zoll, George" <ZOLLGE@mail.northgrum.com>, "Rundgren, Jim" <RUNDGRU@mail.northgrum.com>, "Lee, Leslie" <LEELE@mail.northgrum.com>

Subject: ANPR Contract Close Out

Pat,

Recommendations for rapid contract closeout come from concepts and procedures authorized and implemented by FAR Part 45 Deviation (DAR Tracking Number 99-00008, 13 July 1999). LVP as defined in the FAR Part 45 Deviation is: ST, STE and OPE having an acquisition value of \$5,000 and below.

The recommended replacement process, builds on concepts in the FAR Deviation and further defines LVP as property with an acquisition cost or extended value (contractor-acquired inventory) of \$5,000 and below. It excludes: Agency-Peculiar Property (APP), GFP, GFM, Real Property and Sensitive property. It includes contractor-acquired inventory consisting of: raw material, parts, assemblies, sub-assemblies and work-in-process. Contractors and Government personnel could facilitate timely/rapid closeout of production and service contract property by implementing the following:

1. Throughout the life of the contract, contractor personnel would have disposition authority for LVP. Although accelerating the contract property disposition process is particularly important during the contract closeout phase, during the life of the contract, property frequently becomes excess or obsolete due to configuration changes or change to manufacturing methods.

LVP would not be subject to FAR (and associated DFAR, NASA FAR Supplement, etc.) 45.6, Reporting, Redistribution, and Disposal of Contractor Inventory. Electronic lists of excess LVP would be submitted by the contractor to the owning agency (SPO/PCO). After 30 day pre-disposition screening is performed by the owning agency (PCO/SPO), LVP would be abandoned by the Government to the prime contractor. This process would also apply to prime contract property located at suppliers. Competitive sealed bids would be taken for each lot of property and the property would be sold to the highest bidder. Proceeds from the sale of LVP would be credited to the applicable contract, major subcontract or purchase order. Contractor records of property sold would be open for inspection/review by DCAA Government personnel, as required.



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2.A Site Property Disposition Contract would exist at each business element location. As each production or service contract at that location was physically completed, all property would automatically transfer to the Site Property Disposition contract. Each respective Buying Office (SPO/PCO) would fund a line item on the Site Property Disposition contract for disposal of their property. The Site Property Disposition contract would be similar to a Basic Ordering Agreement (BOA) with individual orders funded with specific estimated completion dates (ecd's) established. The contract would include penalties for delays on the part of both parties (contractor and Government) such as an equitable adjustment to the final contract line item value. Use of Site Property Disposition contracts will allow for rapid closeout of production and service contracts at each business element location.

3. LVP would be exempt from DD Form 1662 Reporting, as required by DOD Far Supplement 245.505-14, Reports of Government property and NASA Form 1018 requirements. This will eliminate an onerous and redundant record-keeping effort required each year for items disposed.

4. Above recommendations (1. to 3.) would apply to contract property located at all prime contractor, associate contractor, major subcontract and supplier locations.

5. The DCMA One Book and corresponding NASA and DOE instructions would be modified to include the above process to ensure consistency of oversight across the industry.

From a Government oversight process, LVP would still be reviewed for all applicable function audits with the exception of Disposition and Reports (1662).

The following audits would be performed by the Government for LVP:

- Property Management
- Acquisition
- Receiving
- Identification
- Records
- Movement
- Storage
- Consumption
- Utilization
- Maintenance
- Subcontract Control
- Physical Inventory
- Contract Closeout

I believe the Government's interests would still be protected, since thirteen of the fifteen function audits would still apply to LVP and SPO/PCO's would have the opportunity to reutilize excess property prior to disposal (e.g. for use as spares or future known spares).

It should be noted the vast majority of property disposed through the Government plant clearance cycle is currently not reutilized. This is especially the case with program-unique property such as special tooling, work-in-process and flown hardware.

Over 90% of the property going through plant clearance currently ends up



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being sold on bid sale. Selling the property on bid sale is the recommendation above. The advantage is that the 90 to 180 day Government screening cycle and inventory verification processes are eliminated. This is where the true gain will be. If the above recommendations are adopted, the contract property disposition and contract closeout processes will be substantially accelerated.

Please forward to the appropriate parties at the Aerospace Industries Association (AIA).

Thanks,

Ron

-----Original Message-----

From: Jacklets, Pat

Sent: Sunday, October 06, 2002 3:35 AM

To: Avetissian, Vic; Creel, Helen M (Ship Systems); Decedue, Don (Ship Systems); Dieter, James; Duckworth, Steven D.; Evans, Earl; Jacklets, Pat; Lassiter, Debbie B.; Meade, Marcia S.; Norman, Wayne; Regalado, Ronald E.; Tisone, Patricia

Cc: Keen, Richard

Subject: FW: Contract Close Out

The Aerospace Industries is requesting comments on Contract Closeout issues. Attached is a notice from the Federal Register regarding a proposed rule issued September 24, 2002 (Volume 67, Number 185)]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr24se02-19] on Contract Closeout.

Some items to keep in mind are the timeframes for contract closeout (FAR 4.804)

Some factors that hinder timely closeouts:

Length of Time for Plant Clearance Action

Contract Transfers - Non-Response to Transfer Requests from PCO - Usually because it is not a high priority

Funding for Disposition Efforts - If Direct Charged

Screening Efforts

Your comments are appreciated. Please reply by COB 10/28/02. Thanks,

Pat

Manager, Property Management

Integrated Systems

AEW&EWS

Ph: 516.575.3302

Fx: 516.346.7395

-----Original Message-----

From: Pat Sullivan [mailto:sullivan@aia-aerospace.org]

Sent: Wednesday, October 02, 2002 2:54 PM

Subject: Contract Close Out

ANPR-4

On September 24 Dick Powers sent you an advance notice of proposed rulemaking (attached) whereby the two Councils put out a request for comments from both

Government and industry on how the Federal Acquisition Regulation (FAR), Defense FAR Supplement (DFARS), and General Services Administration Acquisition Regulation (GSAR) can be revised to facilitate timely contract closeout.

NDIA has proposed that this become a CODSIA case. Do you concur or would you rather each association respond individually?

Do you favor a public meeting for discussion of the subject?

Due date for comments is 11/25/02. PTC will be lead. CPC already has been asked for their comments. Please provide me with your comments on the rule by November 4, 2002, and October 4th as to the need for a CODSIA Case and the need for a public meeting.

Thank you.

ANPR-5  
1886 Southlawn Drive  
Fairborn, OH 45324

Oct 15, 2002

GSA  
FAR Secretariat (MVA)  
1800 F ST NW Rm 4035  
Attn: Laurie Duarte  
Washington, D.C. 20405

Dear Ms. Duarte:

Re: Contract closeout procedure

I am an engineer. 10 years ago, I was in an office at Wright-Patterson AFB that had a problem: we were a Group, and only had authorization for a GS-3 secretary. In 18 months, she'd get her -4, and leave for better climes. The boss put me in charge of closing out 2 in-house work units that had been in the file cabinet for 5 and 7 years. The old instruction included an inch thick book, a 3-page letter, a 2-page letter, and some hand written notes. The closeout took 3 months. I kept everything as a WordPerfect file.

First example: I had written two Technical Memoranda, which were in the boss's in basket 5 and 7 years later. While he was off on a 3 month assignment, I struck! I pulled up my Contract Closeout Procedure, modified the letter to get my reports submitted to the Defense Technical Information Center, printed them, and prepared two packages: coordination letter, copies of the reports, cover letter, and file copies. I pitched it to my acting Group leader ("sure, Dave knows about these reports. They've been in his in basket for years."). He initialed the coordination copy. I drove 7 miles from Area C to Area B, gave it to my Branch Secretary, had my Branch Chief look and sign, then drove to my Division office. Total elapsed time including drive time: 1 hour.

Second example: 60 Minutes candidate. A contractor in Provo, Utah, had been paid. Only problem for closing that puppy was the DD Form 250 was a multiply-faxed xerox with several people's initials on it, and no final report. The Project Manager (aka the guilty party) faxed a -250 to the contractor, partially, incorrectly filled out. Their admin VP corrected his mistakes, wrote some instructions in the margin, and faxed it back here. Without corrections, the PM then faxed that messed up -250 to the DCMAO and DCSMA offices in Denver and Salt Lake City; the contractor was paid \$57,000, on the basis of a multiply mis-filled -250. Denver and Salt Lake had been closed and shipped to Columbus, OH, which had no records. By then, I was the ASTARS (Wright-Patt admin tracking system) rep for my Branch. Division called me 18 months after payment, to ask why the Job Order Number was still opened, with no money on it. I asked the PM for help; he'd initialed things once, he had done enough work, thank you. I got the contract file, and called the VP in Provo. She screamed when I described what I had. She offered to overnight express the final report to me. I said, no, it's 3pm Thursday, snail mail it to my office, I'll have it next week, when I can finish the rest of my work. I used my Contract Closeout Procedure file to create the paperwork, took it to the PM (he refused to do anything), took it to the Group leader (who signed for the PM), and trotted off through Branch to the Division plans and program man who called me Tuesday(?). Without the cooperation (or over the dead body of) the Program Manager, I had the final closeout package in Division 1 week after I was called. That included the mailed copy of the final report, inbound from Provo, UT, to W-PAFB.

I don't just tell you how to close out a contract; I give you the letters to issue the final report, close out the internal JON, pay the contractor, and release the final report to the general public if it is appropriate. I asked my Lab admin assistant what she thought, before I submitted the package as an Air Force Suggestion Program IDEA. She looked at a couple of pages and began to laugh. "Where did you get this?" "3 months work, why?" "The Colonel came in here yesterday, and told me to get 6 people together and have this report on his desk in 6 months. Do you realize you've done 6 people's work?" Yes, I did, and would she approve it if it came to her under the Suggestion Program. Sure would. She nominated me for a cash award, too. \$75. 6 people \* 40 hours/week \* 4 weeks/month \* 6 months = 5760 hours. \$75/5760 = \$0.013/hour, and minimum wage is what?

Fortunately, the contractor's VP wanted to stay on our good side. I dealt with 2 college professors whose school has a national reputation for screwing up. I wrote to them enough that they complained to my Division that I was trying to intimidate them. I was pulled off of the contract. My Branch used my package as justification to not give the school a Phase

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2 \$400,000 contract, when they still hadn't filed the final report a year past due date. It hit the fan when I was installed a contract monitor mid-contract. I asked them to explain \$14.95 for a frying pan, on a contract that was to develop computer software. Within days, they complained to my Division office. Their \$288,000 computer program was useless, but at least this time they wrote something.

On contract closeout, do you have a "bad actor's list", by which you don't give someone another contract, until this list of items is completed?

Peter C. Vorum  
Wright-Patterson AFB  
785-9024 DSN  
937 255-9024 commercial

Peter C. Vorum

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## CONTRACT CLOSE-OUT

This Contract Close-Out package is offered as a guide. Fudge. The letters with attachments have to be addressed to particular offices. They are already formatted for Air Force letterhead paper. Insert your own office symbols, phone numbers, and names for your personnel, before saving them. Keep this info on disk under something imaginative like "CLOSEOUT". Use the disk as a template to generate the material when you need it.

Under a Division Chief's signature, the close-out of a contract accomplishes several things:

- 1) Closes the contract with a letter and DD Form 250 addressed to the administrative and financial offices found on the 250, the contractor, the buyer, and the security office. This completes all payments on the contract.
- 2) Closes the Job Order Number by sending a letter, the DD Form 250, and the ASTARS Job Order Summary through in-house routes.
- 3) It will also issue the final report and put it into the Defense Technical Information Center system. A letter, and copies of the report with signed "NOTICE" page, AFMC Form 649 and Standard Form 298 are routed to the local DTIC office.
- 4) If a paper is to be released to the general public (no restrictions), it must go through review ending with Public Affairs approval. A fill in the blanks form letter is included here.

The JON is closed by composing a Job Order Summary (JOS) report on ASTARS. It replaces the PL40/41 that was in a 14x17 inch format. Items of interest to the addressees will be the Contract number, contract start and completion dates, total dollars, JON, program title, principle investigator (name, address, phone number), program manager/monitor (name, address, phone number), report title and number, and security classification. Add a reference to the final report in the Progress "Z" section of the JOS in ASTARS. Other information is required, but these are probably the chart toppers.

If no classified was involved, a DD Form 254 is not required; the program is simply closed with the proper letters, DD Form 250, and JOS. At the end of a classified contract, there are 4 options:

A contractor can ask to retain classified in writing. The Gov't can grant this request for up to 3 years. This requires the Program Manager to initiate a FINAL DD Form 254 which is coordinated through ASC/SPI before contractor signature.

The Gov't can refuse retention and ask the contractor to return the classified material. No DD Form 254 is needed - close out with the DD Form 250.

The Gov't can instruct the contractor to destroy the classified and return the destruction certificates. No DD Form 254 is needed - close out with the DD Form 250.

Contractor can ask that the classified be transferred to another on-going government contract of similar effort. If Gov't agrees, the losing Procuring Contracting Officer (PCO) must ask the gaining PCO for a letter stating that they will accept responsibility for the classified material.

There are three old guidance packages available that serve as a Close-Out Checklist. None is complete. Office symbols have changed. None has a phone number on it needed to contact anyone should the Project Manager/Engineer wish to ask any questions.

The attached Checklist divides this effort into two tasks: closing the contract with offices off Base, and closing the JON through in-house organizations.

Pete C. Brown  
Fairborn, OH  
937-255-9024

# CLOSE-OUT CHECKLIST

The Work Unit Monitor (Project Manager/Engineer) will generate two packages for each Work Unit. The first includes the Close-Out Letter, Distribution List, and DD Form 250 (this closes the contract); the second includes the letter/list/250 plus the ASTARS package (which replaces the old PL-40 and PL-41 and closes the JON).

**AT COMPLETION OF CLASSIFIED CONTRACTS:** if the contractor has no further use for the classified material, it must be destroyed or returned to the originating Project Manager/Engineer. The Manager/Engineer closes the contract with a DD Form 250. If the contractor requests retention of classified (for a maximum of 3 years), the contractor must submit a list that details what will be retained, to the Project Manager/Engineer. The Project Manager/Engineer completes the final DD Form 254 Contract Security Classification Specification, and sends it to ASC/SPI for review and coordination. ASC/SPI forwards the DD Form 254 to the appropriate contracting office for signature. After three years, the material must be reviewed again. It may be transferred to another contract, destroyed or returned to the originating Manager/Engineer. SPI coordinate on all DD Form 254's at each stage: PR or RFP, Contract, or Final. They need copies from PCO of all actions: DD 250/254, letters of transfer, etc.

**GROUP ONE:** Signed by Division, includes Close-Out Letter, Distribution List, and DD Form 250/254:

	Letter	List	DD Form 250
Contract Financial (Block 12 of DD Form 250)			
Prime Contractor (Block 9)	Original 1 copy	Original 1 copy	Original + 3 copies 1 copy
Contract Administrator (Block 10)	1	1	1
WL/FIE/K (ATTN: Buyer)	1	1	1

**GROUP TWO:** Signed by Division, includes Close-out letter, DD Form 250, and review/sign ASTARS Job Order Summary:

	LETTER	DISTRIBUTION LIST	DD FORM 250	ASTARS Job Order Summary	SIGN ASTARS
Project Mgr/Engr	1 copy	1 copy	1 copy	ORIGINAL 1 copy	-
WL Group	1	1	1	1 copy	-
WL Branch	1	1	1	1	-
WL Div Plans/program					-
WL Division	1	1	1	1	-
WL/FIV (Phyllis Routt, 53796)	1	1	1	1	-
WL/FIE-1 (MSgt Charrington, 53371)	1	1	1	1	-
WL/FIF (53528)	1	1	1	1	-
WL/FIE-1 (MSgt Charrington, 53371)	1	1	1	1	-
ASC/SPI (Linda Nicholson, 52879)	1	1	1	1	-

The original ASTARS Job Order Summary, and coordination copies of the Close-Out Letter, Distribution List, and DD Form 250 and 254 are returned to the Project Manager/Engineer, to be filed in the retirement Case File:

the DD Form 250 and 254 are filed in Section D  
ASTARS Job Order Summary, Close-Out letter, and Distribution List are filed in Section F

AN PR-5

FROM: WL/FIV

SUBJ: Final Report, Contract F33615-90-C-3408

TO: WL/FIVM

FIV

FI-1

DOA

IN TURN

1. Enclosed find AFMC Form 649, Request for Editing and Publishing Support (Atch 1). The Final Report, "Performance and Assessment of Airframe Bearing Systems," by Terra Tek, Inc., (Atch 2) has been reviewed, and is acceptable. Please sign the "NOTICE" page and forward to WL/DOA. Standard Form 298, the Report Documentation Page, is attached to the draft report.
2. Your timely completion of this matter will be appreciated. If you have any questions, please contact the Project Engineer, Mr. Vorum at 72129.

RICHARD E. COLCLOUGH, JR.  
Chief, Vehicle Subsystems Division

2 Atch

1. AFMC Form 649
2. 2 Copies of the Report



ANPR-5

FROM: WL/FIV, Building 45  
2130 Eighth Street STE 11  
Wright-Patterson AFB OH 45433-7552

SUBJ: Contract F33615-90-C-3408 Completion

TO: See DISTRIBUTION LIST

1. The final DD Form 250, Material and Inspection and Receiving Report, for the subject contract is attached for your information and as applicable for your attention. All technical work and data requirements have been satisfied.
2. If you have any questions or require additional data, contact Mr. Vorum, WL/FIVMB, DSN 787-2129 or Commercial 513-257-2129.

RICHARD E. COLCLOUGH, JR.  
Chief, Vehicle Subsystems Division

1 Atch.  
DD Form 250

APR-5

## JOB ORDER SUMMARY

TITLE: ROD END BEARING LIFE ANALYSIS

CONTRACTOR: Terra Tek Inc., 400 Wakara Way, Salt Lake City, Utah 84108 801-584- 2400

PRINCIPLE INVESTIGATOR: Dr. Jian-Juei Wang

MONITOR: Mr. Peter C. Vorum, WL/FIVMB, Wright-Patterson AFB OH 45433-6553, 513- 257-2129

CONTRACT NUMBER: F33615-90-C-3408

JON: 30054091

CONTRACT AWARD DATE: 13-AUG-90

JON START: 01-APR-90

CONTRACT END DATE: 13-FEB-91

JON END: 30-APR-91

CONTRACT STATUS: COMPLETED

JON CATEGORY: 1

TOTAL DOLLARS: \$55,580.00

WORK PHASE: A

WORK CATEGORY: B

PROJECT NUMBER: 3005

THRUST ID: FI

TASK NUMBER: 40

DISTRIBUTION LIMIT: BU

PROGRAM ELEMENT: 65502

CONTRACT TYPE: CJ

REPORT DATE: 03-NOV-92

WORK SECURITY: UNCLASSIFIED

STARTING FISCAL YEAR: 1990

PRIMARY CUSTOMER: XT

DD250 SIGN DATE: 23-APR-91

REIMBURSEMENT CODE: NR

### OBJECTIVE/PAYOFF:

THIS EFFORT SUPPORTS THE INTEGRITY ENHANCEMENT OF SUB-SYSTEMS AND COMPONENTS IN MILITARY AIRCRAFT. BASIC METHODOLOGIES FOR THE DESIGN OF MECHANICAL SUB-SYSTEM COMPONENTS WITH INHERENT LONG OPERATIONAL LIFE ARE LACKING. THE OBJECTIVE OF THIS EFFORT IS TO DEVELOP AN ANALYTICAL MODEL FOR THE INTEGRITY ANALYSIS OF AIRCRAFT ROD END AND ACTUATOR BEARINGS. THE PAYOFF OF THE EFFORT WILL BE AN IMPROVED APPROACH TO THE DESIGN AND QUALIFICATION OF AIRCRAFT BEARING SUB-SYSTEMS.

### APPROACH:

FRACTURE MECHANICS TECHNOLOGY AND MICRO TRIBOLOGY WILL BE EMPLOYED TO DEVELOP MATHEMATICAL MODELS. HISTORICAL WEAR AND FRACTURE DATA WILL ALSO BE USED FOR PRELIMINARY MODEL FEASIBILITY STUDIES. ADDITIONALLY, THE EFFORT WILL BE COORDINATED WITH AIRFRAME AND BEARING VENDOR SOURCES TO ASSURE THAT THE RESULTING PRODUCTS CAN BE UTILIZED BY THE MANUFACTURING COMMUNITY. FINALLY, TEST PROGRAM REQUIREMENTS FOR THE VALIDATION OF THE RESULTING ANALYTICAL MODEL WILL BE IDENTIFIED. A FINAL TECHNICAL REPORT WILL BE SUBMITTED.

### PROGRESS "Z":

ALL TECHNICAL PHASES OF THIS EFFORT HAVE BEEN COMPLETED. THE RESULTS OF THE EFFORT WERE VERY POSITIVE. SPECIFICALLY AN APPROACH TO THE DEVELOPMENT OF AN ELASTOMERIC WEAR MODEL WAS CREATED. THE FURTHER PURSUIT OF SUCH A MODEL WOULD POSITIVELY INFLUENCE THE INITIAL DESIGN AND PRODUCT IMPROVEMENT PHASES OF THOUSANDS OF COMPONENTS EMPLOYING ELASTOMERIC MATERIALS. WITHIN THE AIRCRAFT ARENA THIS WOULD INCLUDE SUCH ITEMS AS BEARINGS, TIRES, BRAKES, ACTUATORS, SEALS, ETC., ETC.. THE EFFORT WAS ADVOCATED FOR FURTHER RESEARCH SUPPORT BUT WAS NOT SELECTED. PROBABLE REASONS FOR THE FAILED SELECTION IS THAT THIS EFFORT SUFFERS FROM CRUD PART

DISINTEREST SYNDROME (CPDS) WHERE R&D IN NON GLAMOROUS APPLICATIONS, NO MATTER WHAT THE PAYOFF, WILL RARELY BE ACCEPTED BY HIGHER LEVEL MANAGEMENT.

TECHNICAL REPORT COMPLETED. WL-TR-91-3096, "PERFORMANCE ASSESSMENT AND ANALYSIS OF AIRFRAME BEARING SYSTEMS," JIAN-JUEI WANG, OCTOBER 1991, DTIC NUMBER AD-B159-103.

### JOB ORDER SUMMARY REPORT

RELATIONAL DATA AND RESOURCES

JON: 24020154

KEYWORDS:  
COSATI CODES:  
SBIR PROGRAM  
0103: AIRCRAFT  
FY90 PHASE I  
1305: COUPLINGS, FASTENERS + JOINTS  
ROD END BEARINGS  
3 2011: MECHANICS  
FRICTION AND WEAR

SYSTEM SUPPORTED: 1 N/A:NOT APPLICABLE

FUNDING IN THOUSANDS:

PE/FUND JON	PRIOR FYs	FY90	FY91	TO FY92	FY93	FY94	COMPLETE TOTALS
65502F/30054091	0	55.6	0	0	0	0	55.6
TOTALS:	0	55.6	0	0	0	0	55.6

MANPOWER (MANYEARS/YEAR AS PORTION OF TOTAL DIRECT TIME AVAILABLE)

CIVILIAN	0.00	0.20	0.15	0.00	0.00	0.00	0.00	0.35
TOTALS:	0.00	0.20	0.15	0.00	0.00	0.00	0.00	0.35

\_\_\_\_\_  
RESPONSIBLE S/E

\_\_\_\_\_  
TAM OR GROUP LEADER

\_\_\_\_\_  
BRANCH CHIEF

\_\_\_\_\_  
DIVISION CHIEF

\_\_\_\_\_  
PLANS/PROGRAMS

\_\_\_\_\_  
THRUST MANAGER

\_\_\_\_\_  
COORDINATION

\_\_\_\_\_  
FINANCIAL

\_\_\_\_\_  
LAB/DIR APPROVAL

ANPR-5

FROM: WL/FIV, Building 45  
2130 Eighth Street STE 11  
Wright-Patterson AFB OH 45433-7552

SUBJ: Contract F33615-90-C-3408 Completion

TO: See DISTRIBUTION LIST

1. The final DD Form 250, Material and Inspection and Receiving Report, for the subject contract is attached for your information and as applicable for your attention. All technical work and data requirements have been satisfied.
2. If you have any questions or require additional data, contact Mr. Vorum, WL/FIVMB, DSN 787-2129 or Commercial 513-257-2129.

RICHARD E. COLCLOUGH, JR.  
Chief, Vehicle Subsystems Division

1 Atch.  
DD Form 250

## DISTRIBUTION LIST

DCMAO Denver  
Orchard Place 2, Suite 200  
5975 Greenwood Plaza Blvd  
ENGLEWOOD CO 80111-4175

DCMR St. Louis  
1222 Spruce Street  
ST. LOUIS MO 63103-2811

Terra Tek, Inc.  
ATTN: Dr. Wang  
400 Wakara Way  
SALT LAKE CITY UT 84108

WL/FIKF (ATTN: The Buyer)

ASC/SPI (ATTN: Linda Nicholson)

FROM: WL/FIV

SUBJ: Request for Public Release Approval (AFR/ASDR 190-1)

TO: ASC/PA

1. Please review the attached material for public release approval. The following information is provided in support of this request:

- a. Type of information (abstract, journal article, technical paper, film/script, technical report, etc):
- b. Title:
- c. Author(s) name, title, and organization:
- d. Contract #/company name:
- e. Name/location of publisher:
- f. To be presented at (give sponsoring organization or technical society, location (city, state), and exact date of presentation:
- g. Deadline for submittal (if other than presentation date):

2. The reverse side of this letter has been completed/signed by requester.

3. The information contained in this material is unclassified, technically accurate, nonproprietary, and considered suitable for public release. It contains no computer software, owned or developed by or for the government. Export restrictions (ie, MCTL, Munitions List (ITAR), and CCL) and current AE/DOD policy have been considered prior to requesting public release approval.

FOR THE COMMANDER

ASD/PA APPROVAL

RICHARD E. COLCLOUGH, JR. Chief  
Vehicle Subsystems Division

---

Higher echelon signature (if applicable)

AN PR-5

Local/AF level clearance is covered by AFR 190-1. ASC/PA needs original + 2 copies of the cover letter (below) + 2 copies of the Tech Paper if locally cleared -OR- 11 copies if the Tech Paper is AF-level cleared.

WL/CA-F needs 1 copy of the form letter and 1 copy of the document.

WL/FI\* coordinates, does not need copies of either.

WL/FI\*\* coordinates, needs a copy of each.



ANPR-5

ADDITIONAL INFORMATION

1. The following statement is applicable (check one):

☐ All references are unclassified/unlimited and are available to the public.

☐ References #\_\_\_\_\_ are subject to distribution limitation. No limited information from these references is included in the document for which clearance is being requested.

☐ No references are contained in attached material.

\_\_\_\_\_  
(Signature of requester) (Date)

2. The technology contained in the material proposed for release:

a. Is (1) being applied, (2) nearing application (maturing), (3) \_\_\_ years or more away from application (select one or more as appropriate).

b. Resulted from technical efforts funded under Program Element  
(identify PE, i.e., 6.1, 6.2, etc).

c. Is the latest state-of-the-art: ☐ Yes ☐ No

d. Has previously been release to the public: ☐ Yes ☐ No

e. Has the following intended application:

3. Other applicable comments or rationale justify clearance for public release:

4. Government point of contact (name, symbol, and telephone):

5. SDI involved: ☐ Yes ☐ No (If yes, explain)

6. Contract:

a. Contains a DD Form 254: ☐ Yes ☐ No

b. Refers to a security classification guide: ☐ Yes ☐ No

ANPR-6



"Mitchem, Martha L  
SBCCOM"  
<martha.mitchem@us.  
army.mil>

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc:  
Subject: ANPR Contract Closeout

10/16/2002 02:10 PM

Suggestions/comments as follows:

It would be much more efficient for contract specialist/contracting officers if they only had to go to one site to go to input past performance information (CCASS/ACCASS/PPAIS). Many action require past performance to be reported when closing out an order or contract. There are a number of systems depending on the type of contract/commodity.

"Final invoice shall be submitted within 60 days of Government acceptance and shall be at least 10% of the contract total or \$1000, whichever is greater." That way we'd have fewer invoices, fewer small final invoices, final invoices would be more valuable to the Contractor, and Contractor would not keep a contract hanging open with "pennies-on-the-dollar".

The 20 month time for completion for "all other contracts" closeout could be shorted.

Where the agency lacks resources, contract out, contract closeouts.

Martha Mitchem  
Chief, Facilities Branch  
U.S. Army Contracting Agency  
APG Directorate of Contracting

ANPR-7



"Vogt, Mel E NWO"  
<Mel.E.Vogt@nwo02.usace.army.mil>

10/18/2002 11:57 AM

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc:  
Subject: Contract Close Out Issues

Ladies & Gentlemen:

A comment that I have that might be better suited to the DCAA management or to the Office of Management and Budget.

With contract Close out's being delayed, sometimes multiple years after actual contract completion and/or expiration, a means of shortening that delay would be the following:

Increase the DCAA manning with fully trained auditors in all offices that perform contract close out audits. Doing so would create a reduction in the time delays of actual Contract close out. Contract Close Out audits take considerable time that should and needs to be shortened to allow more expeditious close out processing. I understand that in this time of streamlining Government, an increase in manning of any agency is not the preferred method of remedy, but, if this were to occur, time delays for close out actions would reduce through performance of necessary audits required in conjunction with close out.

Thank you for allowing me the opportunity to voice an opinion on a method of helping to expedite close out of contracts.

Mel Vogt  
Contract Specialist  
U.S.Army Corps of Engineers, Omaha District/

ANPR-8



**"McDonald, Kandi A  
SBCCOM"  
<kandi.mcdonald@SB  
CCOM.APGEA.ARMY.  
MIL>**

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc: "Mitchem, Martha L SBCCOM" <martha.mitchem@us.army.mil>  
Subject: ANPR Contract Closeout

10/08/2002 08:41 AM

To whom it may concern:

In my career, I have had many fixed price contracts left unclosed because contractors fail to invoice for amounts due. I have on numerous occasions practically begged contractors to invoice for remaining balances and still they refuse to bill which leaves us unable to close out a contract/delivery order.

I suggest for fixed price contracts that a one year time limit after Government acceptance of goods and services be imposed on contractors for submission of any outstanding invoices. I would also extend this requirement to claims against the Government for fixed price contracts. Any provision developed should also state that failure to bill or file a claim within the one year time limit would authorize the Contracting Officer to unilaterally deobligate any unliquidated balances remaining on a contract or delivery order. I suggest language to this affect should be added to payment clauses.

Sincerely,  
Kandi A. McDonald  
Contracting Officer  
Army Contracting Agency  
Directorate of Contracting, Aberdeen Proving Ground  
410-278-2372

ANPR-9

Thomas R. Love  
2835 Seasons Way  
Annapolis, MD 21401  
410-224-8351  
October 28, 2002

Ms. Laurie Duarte  
FAR Secretariat (MVA)  
1800 F Street, NW  
Washington, DC 20405

RE: ANPR Contract Closeout

Dear Ms. Duarte

I read in the FAR Alert recently the article on "New contract closeout provisions sought" and that you were soliciting comments to help solved the problem of so many contracts that have not been closed out on a timely basis.

Even though I am not a government or industry member, I felt based on my background, that I could offer a few suggestions. My background is one of being in the government contracting arena for 12 years as a Controller for several government contractors and for the last 2 years as an independent financial consultant working with companies on closing out their contracts.

I do not believe the provisions need to be changed.

What I do believe is needed is the assignment of an individual within each agency to take the responsibility to reduce this backlog. That the individual be trained in how to reduce the backlog as quickly as possible. This can be accomplished through showing them how to utilize reports based on type of contract, whether or not the contractor how billed 100% of the value, issuing de-oblation requests to motivate contractors, etc.

Over the past four months, I closed out over 500 contracts (1,200 CLINS) that had a completion date going as far back as 1994. These contracts were where we were the prime with the government, a first or second tier subcontractor to another government contractor, a grant or a prime with a private company. I was assigned as the primary individual to accomplish this task.. I realize this is a small number compared to what you have, but it is a start.

I would be interested in discussing with you and the General Services Administration (GSA) how we accomplished this task and how it might work for the government. Please feel free to call me at the above telephone number if you are interested.

Sincerely,



Thomas R. Love

11/16/02

ANPR-10



"Burton, Pam"  
<pburton@DCMDW.DC  
MA.MIL>

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc:  
Subject: ANPR Contract Closeout

11/18/2002 11:35 AM

In response to the advance notice of proposed rulemaking, the following is submitted:

1. Government property issues are one of the leading contributors to overage physically complete contracts. We recommend one plant-wide Government Property contract for which all Government Property would be accountable. This could be administered on a system basis to ensure the property is dispositioned timely and appropriately. Actions taken on the Government Property contract would not impact closeout of individual contracts.

2. The reconciliation process is also a leading contributor of overage physically complete contracts. Specifically for the old, large dollar/complex contracts that have been passed from one contract management office (DCMA) to another and from one payment office (DFAS) to another with missing records. The reconciliation process needs to be streamlined so that contracts can be closed without reconciling to the penny.

Thank you for the opportunity to provide comments. If you have any questions, please contact me at the phone number or email address stated below.

*Pamela S. Burton*

*Contracts Subject Matter Expert*

*DCMA Boeing St. Louis*

*Technical Assistance Group*

*Technical Assistance Team*

*314.233.9105*

*pburton@dcmdw.dcmamil*

ANPR-11



**Laurie A. Duarte**  
11/21/2002 05:51 PM

To: LaRhonda M. Erby-Spriggs/MVA/CO/GSA/GOV@GSA  
cc:  
Subject: ANPR Contract Close-out

LaRhonda,

For the file.

May your day be well,

Laurie A. Duarte  
Supervisor  
Regulatory Secretariat  
Office of Acquisition Policy  
General Services Administration  
202-501-4225

----- Forwarded by Laurie A. Duarte/MVA/CO/GSA/GOV on 11/21/2002 05:54 PM -----



**Lena Y. Bowie**  
11/21/2002 02:51 PM

To: Laurie A. Duarte/MVA/CO/GSA/GOV@GSA  
cc: Lisa D. Maguire/FCO/CO/GSA/GOV@GSA  
Subject: ANPR Contract Close-out

To: Office of Acquisition, Policy Division, MVA  
From: Acquisition Management Center, Commercial Acquisition, FCOC  
Topic: ANPR Contract Close-out  
Due: November 21, 2002

Laurie,

The Acquisition Management Center has no comments on subject above.

Thank you for the opportunity to comment.

Lena Y. Bowie  
Procurement Analyst  
Acquisition Management Center, FCOC  
Lena.Bowie@gsa.gov  
(703) 308-4458





INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

ANPR-12  
NOV 21 2002

Ms. Laurie Duarte  
General Services Administration  
FAR Secretariat (MVA)  
1800 F Street, N.W., Room 4035  
Washington, D.C. 20405

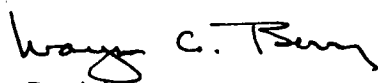
Dear Ms. Duarte:

We have reviewed the request for comments published in the Federal Register on September 24, 2002, on whether any changes should be considered to the Federal Acquisition Regulations (FAR), the Defense Supplement to FAR (DFARS), or the General Services Acquisition Regulations (GSAR) to facilitate timely contract closeouts. We do not believe the FAR regulations are the problem. We recommend that a study be performed to determine whether other causes contribute. For example, delays in closing out contracts in a timely manner could be due to the constant struggle to prioritize limited resources in buying organizations. Contracting officers may not give contract closeouts a high priority after products or services are received.

We have attached a list of IG DoD reports related to contract closeouts. The interagency team that has been established to review the FAR, DFARS, and GSAR requirements to determine what changes, if any, can be made to facilitate timely contract closeouts may want to review those IG DoD reports. The reports are available from our website at <http://www.dodig.osd.mil/audit/reports/>.

Thank you for the opportunity to comment. If you have any questions, please contact Ms. Madelaine Fusfield at email ([mfusfield@dodig.osd.mil](mailto:mfusfield@dodig.osd.mil)) or phone number (703) 604-8739.

Sincerely,

  
for Patricia A. Brannin  
Acting Assistant Inspector General  
Inspections and Policy

Attachment

ANPR-12

**Office of the Inspector General of the Department of Defense  
Advance Notice of Proposed Rulemaking on Contract Closeouts**

**Audit Reports Issued by the OIG on Contract Closeouts**

IG DoD Report No. D-2002-076, "Funding Invoices to Expedite the Closure of Contracts Before Transitioning to a New DoD Payment System" (03/29/02)

IG DoD Report No. D-2002-027, "Closing Overage Contracts Prior to Fielding a New DoD Contractor Payment System" (12/19/01)

IG DoD Report No. D-2000-088, "DoD Acquisition Workforce Reduction Trends and Impacts" (02/29/00)

IG DoD Report No. 97-111, "Management and Administration of Contract MDA903-91-D-0061" (3/17/97)

IG DoD Report No. 93-058, "President's Council on Integrity and Efficiency Summary Report on Audits of the Contract and Grant Closeout Process" (02/23/93)

IG DoD Report No. 93-INS-01, "Defense Supply Service-Washington Inspection Report" (12/16/92)

IG DoD Report No. 92-076, "Administration of the Contract Closeout Process Within DoD" (04/15/92)

IG DoD Report No. 91-065, "Administration of the Contract Closeout Process at the Defense Contract Management District West" (03/20/91)

IG DoD Report No. 91-064, "Administration of the Contract Closeout Process at the Defense Contract Management District Mid Atlantic" (03/20/91)

IG DoD Report No. 90-108, "Administration of the Contract Closeout Process at the Defense Contract Management Region, Dallas" (09/18/90)

AN PR-13

**COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS**

**2111 Wilson Boulevard, Suite 400**

**Arlington, VA 22201**

**www.codsia.org**

**(703) 247-9490**

November 25, 2002

CODSIA Case 8-02

General Services Administration  
FAR Secretariat (MVA)  
1800 F Street, NW.  
Room 4035  
ATTN: Ms. Laurie Duarte  
Washington, D.C. 20405

Re: ANPR Contract Closeout  
Federal Register: September 24, 2002 (67 FR 59799)

Dear Ms. Duarte:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to comment on the Advance Notice of Proposed Rule-Making (ANPR) on contract closeout that was published in the September 24, 2002 *Federal Register*.

Formed in 1964 by industry associations with common interests in defense and space fields, CODSIA is currently composed of six associations representing over 4,000 member companies across the nation. Participation in CODSIA projects is strictly voluntary; a decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

We agree with the ANPR that there are a number of process-related reasons that contribute to the inability to closeout contracts in a timely manner. We have identified several areas that we believe contribute to the delays. To address some of these process-related impediments, we have made the following recommendations:

1. Government contracting officers appear to lack flexibility to use sound business judgment to closeout contracts. For example, closeout of Fixed Price Incentive contract types is routinely delayed until final indirect cost rates have been negotiated. In such instances, we recommend use of provisional indirect rates along with negotiation of costs. In general, we recommend allowing streamlined contract closeout where warranted, based on contract type and dollar value. For instance, contracting officers should be permitted to closeout a Time and Material contracts valued at less than \$1 million that contains minimal non-labor costs in an expeditious fashion, since the variable portion of the contract price is likely immaterial in amount. If more process oversight is needed, we recommend establishing a high-level working group within each agency, empowered under the FAR with authority to closeout contracts with

ANPR-13

no further reconciliation efforts where it is in the Government's interest to do so, and the contractor agrees.

2. Currently, the FAR does not clearly spell out contracting officer responsibilities with respect to reconciliation of contract costs. Although internal agency policies may address this issue, we recommend that language be added (perhaps to FAR Part 42) to clarify that contracting officers periodically must reconcile contracts financially to ensure that all numbers in the contract are correct, consistent, and complete, including all modifications. Further, in FAR Part 4, language should be added to clearly require the contracting office to keep hard copies of all documents that may be needed by DFAS for contract reconciliation for final payment (e.g., DD250s, invoices, payment vouchers, etc.) until the contract is closed.

3. Government administrative agencies such as DCMA seem to lack necessary funding and resources to address the problem. Government audit agencies do not seem focused on closeout of prime contracts. In our view, contract closeout activities (including closeout audits) are often not given the same priority as other, more current needs. One way to address this problem might be to have agencies add in a budget line item for contract closeout activities.

4. The current guidance on use of "quick close-outs" found in FAR 42.7 is overly restrictive. Although the language provides for a contracting officer waiver of the limits "based on a risk assessment," in our experience contracting officers are reluctant to exercise such discretion. To address this concern, we recommend that the indirect dollar limitation be increased to \$10 million, the percentage limitation be increased to 50 percent, and administrative agencies develop policies and procedures to guide contracting officers through the waiver risk assessment process. If a \$10 million limitation is perceived as being too expansive to protect the government's interests, then we would recommend a limitation tied to the percentage of a contractor's flexibly priced business or another meaningful metric. Further, consideration should be given to incorporating the quick closeout class deviation to FAR 42.703-1(b), FAR 42.703-1(c) (2), and 42.708(a) (2) as a final rule. Finally, we recommend that a policy statement be added to FAR 42.708 requiring the use of quick closeout for subcontracts to the maximum extent possible.

5. Current FAR language does not address how a contracting officer should handle a contractor's failure to submit its final indirect cost rate submission. We recommend that language be added that is similar to the current CAS administration clause (FAR 52.230-6). That clause permits a 10 percent payment withhold against current contractor payment requests, up to the general dollar magnitude of the Government's financial exposure, when a contractor does not submit its required CAS cost impact proposal. A 10 percent payment withhold is more equitable than the current DCAA/DCMA imposition of a 20 percent decrement to a contractor's total costs for the year in which it does not submit its final indirect cost rate proposal.

6. We recommend developing incentive plans to reward contractors that fulfill their contract closeout commitments. Such incentives might include additional fee, specific award fee/incentive fee objectives, or other similar means. Contractor closeout activities might also be a separately priced Contract Line Item Number. In fixed price contracts, incorporate a priced data item for required contract closeout documentation. If contract closeout is a priority objective for the Government, then contracts should be negotiated with that objective in mind.

7. Often, closeout delays are caused by poorly understood document disposition instructions. We recommend creation of a solicitation/contract clause that would include easily understood instructions for the disposition of classified documents. This would likely be done at the agency FAR-supplement level, but would aid the process immensely. There also is a need for disposition instructions for government property in the contract. This is especially important when hazardous materials are, or are expected to be, involved. Additionally, we recommend creation of a new provision to FAR 7.105 to require a contract closeout plan as part of the acquisition plan.

8. The current Government property disposition process needs to be improved. The time lag between contractor submission of property schedules and receipt of disposition instructions contributes to the delay of closeout. We recommend priority be given to the release of the final rule on FAR Part 45.6, Reporting, Redistribution and Disposal of Contractor Inventory, so that its benefits can be implemented. We also recommend issuing a policy statement regarding the use of a single property management contract. If all government property were accountable to a single property management contract, the schedules for property transfers to a follow-on contract or disposition would have no effect on the performing contract. Additionally, we recommend providing the contracting parties with more flexibility to quickly disposition material where it makes sense to do so.

9. We believe time frames for government actions should be established. Currently, the FAR discusses time frames for the contractor to fulfill, such as submission of a final indirect cost rate proposal within 6 months after fiscal year-end, and submission of a final voucher within 120 days of settlement of indirect cost rates. The FAR is silent regarding timing of the Government's actions. For example, how long after receipt of a contractor's proposal does the cognizant audit agency have to initiate its audit? What is the time frame for providing audit reports of subcontractor costs? How long after receipt of the audit report does the administrative contracting officer (ACO) have to initiate negotiations? How long does the Government have to issue property disposition instructions?

10. Our member companies have experienced delays in obtaining required assist audit reports for subcontractors' portions of contract costs. It is virtually impossible to closeout a prime contract until the subcontracts under it are closed, and Government audit agencies must be responsive to the needs of prime contractors if the contract closeout deadline is to be achieved. Part of the solution may be to create a new provision to require a contract closeout plan in the subcontract Plan. Additionally, perhaps consideration should be given to deleting the requirement to closeout subcontracts as part of the prime contract closeout process. If subcontractor costs change subsequent to closure of the prime contract, then such cost reductions can be handled in a manner similar to the way other adjustments (such as income tax refunds or pension plan adjustments) are handled.

11. In many contracts, especially service contracts, Procurement Contracting Officers (PCOs) automatically include clauses for property/security/patents even when there is no probability that such issues will arise. This inclusion generates the need for closeout certifications for each of these areas, both at the prime level and at each subcontract tier. We

recommend consideration of some discretionary capability for PCOs to remove these requirements in contracts where they are not applicable.

12. We also recommend that consideration be given to adopting the objectives that one of our member companies and the cognizant DCMA office are considering including in a pilot program to expedite the closeout of the company's physically completed contracts. Those objectives, revised to apply to all member company contracts, are shown below:

- Firm Fixed Price (FFP) Contracts. On firm fixed price completed contracts, when all contract line items are complete and the contractor and the ACO have agreed on contract price and cumulative disbursements, the ACO should instruct DFAS to disburse any remaining unliquidated obligations (ULO) amounts up to contract price and close contracts. There should be no requirement for submission of a final invoice(s).
- Cost Plus Fixed Fee Contracts (CPFF). Bundle completed contracts for the same buying command. De-obligate remaining funds to be used for (a) payment of company invoices requiring replacements funds and (b) fund cost overruns on active contracts. For contractors whose billing systems meet high standards for compliance with the FAR and allowable cost reviews, audit final vouchers on CPFF contracts on an exception basis.
- Relax rules to enable DFAS and DCMA to realign disbursements by Accounting Classification Reference Number (ACRN) to eliminate negative ULOs.

Finally, we recommend some process changes that the Council members may wish to report to their agencies. These changes include:

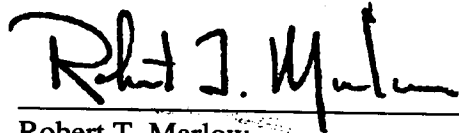
- a. Permit direct submittal of DD Form 250Z to document contract completion and to serve as the final invoice.
- b. Allow direct electronic submission of final vouchers
- c. Establish centers of excellence in contract reconciliations, establishment of final rates, expiring funds to assist in resolving issues.
- d. Provide training to the closeout personnel, including the use of risk assessments.
- e. Waive the requirement for final audits on contracts under \$500K.
- f. Grant a one-time waiver to USC 1553 to close contracts using negotiated settlements
- g. Move away from ACRN accounting.

ANPR-13

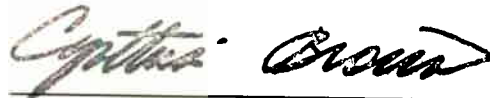
- h. Use Integrated Process Teams consisting of members from DCMA, DFAS and the contractor, to resolve issues with problem contracts.

We understand that contract closeouts are a significant problem for the Federal Government. We thank you for this opportunity to suggest improvements to the existing process, and look forward to seeing the proposed rule. If you have any questions or need additional information, please contact CODSIA Project Officer Ruth Franklin at (703) 247-2598 or at rfranklin@ndia.org.

Sincerely,



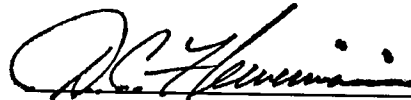
Robert T. Marlow  
Vice President, Government Division  
Aerospace Industries Association



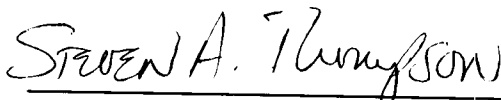
Cynthia Brown  
President  
American Shipbuilding Association



Gary D. Engebretson  
President  
Contract Services Association



Dan C. Heinemeier  
President, GEIA  
Electronic Industries Alliance



Steven A. Thompson  
Vice President, Government Policy  
National Defense Industrial Association



Alan Chvotkin  
Senior Vice President  
Professional Services Council





ANPR-14

November 25, 2002

General Services Administration  
Attention: Ms. Laurie Duarte  
FAR Secretariat (MVA)  
1800 F Street, NW, Room 4035  
Washington, DC 20405

Dear Ms. Duarte:

The Aerospace Industries Association appreciates the opportunity to provide comments on the Advance Notice of Proposed Rulemaking on contract closeout. While we fully support the comments submitted by CODSIA, we believe that more detailed recommendations associated with the disposition of property would be helpful. AIA has led the industry effort to rewrite FAR Part 45, "Government Property," and we have significant insight into the importance of disposing of excess property expeditiously to facilitate rapid contract close out. In this regard, we recommend that priority be given to issuing changes to DFAR 45.6, "Reporting, Redistribution, and Disposal of Contractor Inventory" as a final rule. The issuance of this rule will improve the efficiency of the disposition process and will accelerate the closeout process.

The following are additional changes that we recommend be adopted in order to expedite the property disposition process:

- Allow the PCO/ACO to make the determination of whether property should be reutilized or scrapped.
- Once property is submitted on an inventory schedule, transfer accountability to the government for purposes of contract closeout.
- Consider transfer of all government property at a site from individual contracts to a facility property management contract to facilitate closeout of the individual contracts.
- After military unique items are rejected for reutilization by the buying agency, they should be scrapped since it is unlikely they could be reutilized. This would reduce the risk of disclosure of sensitive technology through resale.

If there are any questions or if we can be of further assistance, please do not hesitate to contact me at (202) 371-8522.

Sincerely,

A handwritten signature in black ink that reads 'Patrick D. Sullivan'.

Patrick D. Sullivan  
Assistant Vice President  
Procurement and Finance

AnPR-15



"Casey, Pamela"  
<pamela.casey@baesystems.com>

To: "anpr.contractcloseout@gsa.gov" <anpr.contractcloseout@gsa.gov>  
cc: "Pamela Casey" <pamela.casey@baesystems.com>  
Subject: Contract Closeout

11/25/2002 09:44 AM

Thank you for the opportunity to comment on the Proposed Rules for Contract Closeout. This is a critical area for both the contractor and the government and we look forward to working with you to facilitate greater use of this process.

<<Contract Closeout - Proposed rule1.doc>>

Thanks,

Pam

Pamela R. Casey  
Manager, IEWS Contracts  
BAE SYSTEMS  
P.O. Box 868, NHQ1-631  
Nashua, NH 03060-0868  
Phone: (603) 885-0541  
Fax: (603) 885-5566

"We protect those who protect us"



Contract Closeout - Proposed rule1.

APR-15

Thank you for the opportunity to comment on the Proposed Rules for Contract Closeout. This is a critical area for both the contractor and the government and we look forward to working with you to facilitate greater use of this process.

#### **A. Quick Closeout Procedures**

We appreciate and applaud the government initiative started about 5 years ago to implement a "Quick Closeout Procedure". However, it does not appear that the buying activities have fully embraced this initiative. It is our impression, that in most cases, this is only used as a last resort or when the contract has gone "overage". It is also our understanding, that metrics are collected at all buying agencies to determine the usage of this tool and that the results have been disappointing. From an industry perspective, contracting officers appear reluctant to rely on and negotiate a "quick closeout" rate vs waiting on the final negotiated rates, due to "second guessing" of their positions from DCAA or other government audits.

##### **Recommendation:**

- (1) Quick closeout rates should be mandatory for low dollar contracts, (if final rates are not available) until the DoD backlog is manageable.
- (2) Require all ACO's to establish quick closeout rates.
- (3) Allow contracting officer's full authority to make good sound business decisions. Place a moratorium of 3 years on oversight audits of closeout activities.
- (4) If a contractor historically has received an adequate/satisfactory rating on their accounting, estimating and purchasing systems by the local DCMA office (and quick closeout rates are not negotiated) allow certified year end rates or contractors proposed indirect rates be used for quick closeout.

#### **B. DD882, Patent Rights - Reporting & Notification:**

If FAR 52.227-12 is in the contract, the Contractor must submit interim reports every twelve months and a final report within three months of completion of the contracted work stating if any inventions were developed on this contract. If no inventions have been reported, a DD882 is submitted as negative. After the final report is received (by the DCMA office), it is sent to the customer for concurrence and approval, which can take anywhere from two months to twenty four months, depending on workload, to receive the document back.

Ampl-15

**Recommendation:**

(1) If the contractor has submitted a negative on all interim reports and the final report (stating there were no inventions on this contract), allow the ACO to notify the customer that they are in receipt of the Final report, provide a copy to the customer and proceed with closeout after 30 days.

**C. Classified Programs:**

Classified Programs usually are innovative in their approach to resolving issues. Both sides appear to work closely together and compromise on issues that make good business sense and still protect the interest of the Government.

**Recommendation:**

(1) Quick closeout or certified year-end rates should be prescribed for use on all classified contracts.

**D. Government Property: MOCAS**

When the Government extends the contract performance period (moving out the completion date), the new completion dates do not appear to be updated in all areas of MOCAS. The Government Property Administrator evaluates the MOCAS database and often asks for property closeouts, when in fact the contract is still open. DCMA requests the contractor to verify the data and prove the contract was extended. This takes time and delays closeout.

**Recommendation:**

(1) When contract period is extended, MOCAS should automatically be updated to reflect the current performance period. An automatic data feed would be preferred to ensure an updated database.

**E. Government Property: Reconciliation of Property**

Contract closure requires Government property to be "zeroed out", by either transferring it forward to another contract, disposing of it (returning it or following plant clearance process), or asking for relief of accountability. Current regulations treats "no value" accountable property at contract completion inconsistently. "No Value" meaning property with no further physical benefit to the Government.

Virtually all-residual "no value" property is scrapped via the plant clearance process because it is on hand for the Government to view and to verify. Lose that same item, and the regulation process is to assume that it was "of value" and the Lost Damaged Destroyed (LDD) process is applicable. In

April-15

reality, items "of value" are active and rarely lost, and practically all lost items are inactive and of "no value".

The LDD relief process is founded on the notion that contractor personnel may have been negligent, therefore the lost items have to be investigated which translates into delay, often lengthy delays (several months or years). Recognize that lost property over a long period of contract performance is normal attrition. The Government received the value of those lost items in the goods and services that were delivered. Property that was used to produce the final item is not missing and is still available for use on any follow-on contract. Over time the production process matures and some early-acquired property is no longer used or no longer usable and gets set aside. With mergers, personnel changes, remodeled or moved work areas, property that has been set aside may get lost over time.

Also, with the emphasis on contract closeout, the Government sometimes transfers all government property to another contract so that the current contract can be closed out. However, in this process there is no reconciliation of government property.

Since the Government does not depreciate property, the original acquisition cost is carried in the property record, which tends to be interpreted that the item is still valuable. Couple that with requiring the contractor to tag and record practically every property item, regardless of its cost or physical size, at contract closeout, no value-added LDD processing delay is experienced.

**Recommendation:**

- (1) Residual property is disposed of through the current standard plant clearance process.
- (2) Government Property Administrator performs a review of the recorded property that was not found at contract completion, and grants accountability relief on the spot.
- (3) Conditions for simplified relief:
  - (a) Contractor maintained an approved property system during the period.
  - (b) Lost item has acquisition date of 5 years ago or greater.
  - (c) Lost item has an original acquisition cost of \$100,000 or less.
- (4) Government Property Administrator retains the right to require a full LDD report and fully investigate.

**F. Lost or misplaced documents or files**

Ampl-15

With the various mergers, acquisitions and relocations, several documents required for contract closeout might have been misplaced and cannot be located. Sometimes, both the contractor and the government can expend several hundred hours researching without success. If both parties agree that all services/products have been received, the records indicate that all payments have been made, and there are no outstanding actions, the Contracting Officers should be able to issue a final determination that the contract is closed and can be dispositioned (without expending those valuable resources).

**Recommendation:**

- (1) Contracting Officers have the authority to issue final disposition instructions when both the Government and Contractors agree that the records indicate that all goods/services have been received and payment has been made.

**G. Reconciliation:**

Often times, the contract cannot be reconciled for a variety of reasons, excessive number of modifications, change in government and/or contractor systems, DFAS paying from the wrong CLIN or ACRN. If contracts cannot be reconciled, and it appears that only a small \$ amount remains on the contract (and all products and services have been received) allow the contracting officer to issue a final notice of closeout with the concurrence of the Contractor.

**Recommendation:**

- (1) Allow the Contracting Officers and the Contractor to identify a certain dollar threshold that when either a credit or a debit is remaining on the contract, both parties will agree that the contract is closed, the file will be documented and final disposition instructions issued.
- (2) Government personnel should reconcile all payments with the contractor on an annual basis.
- (3) Identify procedures for Contracting Officers to use when reconciliation is not possible due to DFAS errors.
- (4) Government property (see comments above)

**H. Subcontracts - Assists Audits:**

In Closing subcontract costs on CP or FPI, allow contractor audited results in lieu of DCAA audits, where the cumulative total is less than an approved dollar threshold. Often times, depending on the DCAA staffing, audits can take up to 2 years to complete which precludes timely closeout.

**Recommendation:**

- (1) Establish a reasonable threshold for assist audits.

April 15

**I. Miscellaneous items not covered in the FAR:**

- (1) **Contract Count:** Do government offices use contract count, as a basis for determining manpower needs? If contract count is the measurement, wouldn't that be counter productive to closing out contracts expeditiously? Recommend metrics dealing with contract count be eliminated. Conversely, a reward for closing out contracts, in the form of manpower for other programs, should be instituted.
- (2) **Manning:** It does not appear, the Government has manned the contract closeout process sufficiently to "work off" the growing backlog. DCMA, DCAA and in particular DFAS, are overwhelmed with the numbers and it does not appear they have a clear goal to achieving success. Recommend establishing metrics that would monitor manpower contracts awaiting closeout and overage contracts.
- (3) **Price Negotiation Sustention Policies:** It has long been the **unwritten** policy to all Contracting Officers that the DCAA position was the position that was to be used when negotiating rates with the Contractor.
- (a) The DCAA recommendation should be viewed as a recommendation only and not construed as a mandatory government position. DCAA is but one tool in the contracting officer's toolkit.
- (b) DCMA currently has a metric called Right Price. The information that is used to determine the Right Price is Price Negotiation sustention rate, and Negotiation Cycle Time. As long as the fear exists of being measured for not using DCAA recommended rates, the process will not move forward expeditiously.

Thank you very much for giving us the opportunity to submit our recommendations for improving contract Closeout. Both our organizations are limited in resources and any relief in these areas would expedite the process.

Pamela R. Casey  
Manager, IEWS Contracts  
BAE SYSTEMS



"janik, pat"  
<pjanik@hq.dcm.mil>

11/25/2002 12:06 PM

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>

cc:

Subject: Comments for Advance Notice of Proposed Rulemaking regarding Contract Closeout

ANPR-16

Here are two comments for proposed revisions to the FAR to facilitate timely contract closeout.

<<FARDFARnovation11F.doc>> <<Contracts Disputes.doc>>

If you have any questions, please contact me.

Patricia Janik  
DCMA MOCAS Transition Assistance Center  
703-428-0986  
pjanik@hq.dcm.mil



FARDFARnovation11F.doc Contracts Disputes.doc



ANPL-16

TO: FAR/DFAR Ad Hoc Committee

Provision: SUBPART FAR 42.12/DFAR 242.12 - NOVATION AND  
CHANGE-OF-NAME AGREEMENTS

Recommend that language be added to this  
section to address issues arising from  
corporate mergers and acquisition, which are  
becoming an impediment to timely contract  
closeout.

Reasons for Recommendation:

1. Many mergers and acquisitions are  
impacting and delaying the timeliness of  
closing a contract(s).
2. Loss of "Industry Corporate" knowledge.
3. Loss of "Government Corporate" knowledge.
4. Loss or incomplete documentation of many  
types of records/data, e.g. contract  
information, contractor information, etc.  
during this process.

***Ben Sottile***

***Ofc: 703-428-0981***

***Fax: 703-428-1368***

***DCMA MOCAS Transition Assistance Center***

ANPR - 17



**"Fleischman Daniel R  
Civ ASC/PKC"  
<Daniel.Fleischman@  
wpafb.af.mil>**

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc: "Myers Dominique B Civ ASC/PKC" <Dominique.Myers@wpafb.af.mil>  
Subject: Recommended FAR and DFARS Revisions

11/25/2002 02:24 PM

ASC/PKC at Wright-Patterson AFB Ohio requests the following be considered for contract closeout rulemaking:

<<ANPR.doc>>

Thank you;

Dan Fleischman  
ASC/PKC



ANPR.doc

Memorandum for Laurie Duarte, FAR Secretariat

April-17

Subject: Advance Notice of Proposed Rulemaking, Contract Closeout

1. The Air Force Aeronautical Systems Center (ASC) Contract Closeout Office recommends several changes to the FAR and DFARS to facilitate contract closeout. In FAR 4.804-5 Procedures for Closing Out Contract Files, under (a) add (14) Contractor's final invoice has been submitted; and (15) Contract funds review is completed and excess funds deobligated. In 4.804(a)(14) ASC recommends a time period be specified for final invoices or billings from the contractor be stipulated. We believe contractors should be required to submit final vouchers/invoices within six months of the final DD Form 250 for Firm Fixed Price type contracts, and six months after negotiation of overhead rates for cost type contracts.
2. In FAR 4.804(a)(15), we recommend the Procuring Contracting Officer (PCO) be authorized to make a determination that it is in the best interest of the Government to close a contract without formal audit. In DFARS 204.804, we recommend language be added stating when a PCO makes such a determination, DFAS align MOCAS data with the negotiated settlement. The PCO should make this determination after consultation from appropriate organizations such as Defense Contract Management Agency (DCMA), Defense Contract Audit Agency (DCAA), the contractor, Finance and Accounting, and Legal. This policy could be utilized in situations such as these:
  - a. When the contractor, customer, cognizant DCMA office, and the buying office mutually agree that all contractual deliverables have been received and accepted, all have been invoiced, and payment has been received. This agreement will be in writing, and signed by the PCO, Administrative Contracting Officer (ACO), and the contractor.
  - b. In situations which identify the contract as being irreconcilable, such as when there are missing invoices due to the age of the contract, changes in paying station which result in loss of payment and accounting records, and when there are any other circumstances which make a contract irreconcilable.
  - c. Other situations such as when there are existing progress payment balances, positive or negative, and Accounting Classification Reference Number (ACRN) overpayments that cannot be reconciled, providing all parties agree to closeout under these conditions. Buying offices, DCMA, and the contractor can often times come to agreement on final settlement amounts in these cases. However, due to errors in MOCAS, DFAS often does not agree with these settlement amounts, and is reluctant to make the one-sided adjustments necessary to bring MOCAS into agreement with the final negotiated settlement amount. This can drastically extend the amount of time to contract closeout.
  - d. When we need to determine that all deliverables have been received and accepted when documentation is missing, the Government could use the contractor's records as documentation that all items/services have been

ANPL 17

delivered, as long as the contractor has an accounting and billing system that DCMA approved.

3. We request these proposals be considered for the anticipated rulemaking.

Daniel R. Fleischman  
Procurement Analyst  
ASC/PKC, WPAFB OH



"Walker, Michael  
(NIH/OD)"  
<WALKERM@od6100m  
1.od.nih.gov>

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc:  
Subject: Comments

11/25/2002 02:34 PM

ANPR 18

The following comment was submitted by a contracting officer here  
at  
NIH: Close-out Section should not occur out without coordination with the  
CO since some should not be closed until the statute of limitations has  
expired, claims/litigation settled, and/or 1% fees collected in some  
instances (once Contractor's Release executed, very difficult if not  
impossible to collect).

ANPR-19



"hill, vivian"  
<vhill@hq.dema.mil>

11/26/2002 05:13 PM

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>

cc:

Subject: ANPR Contract Closeout

FAR 4.804-3 Closeout of paying office contract files state:

The paying office shall close the contract file upon issuance of the final payment voucher.

Believe this statement to be ambiguous and misleading for DoD contracts. Recommend a reference to something more real for DoD contract closeout be referenced in the DoD FAR Supplement.

ANPR-20



"Norling, Jennifer"  
<JNorling@dcmdi.dcm  
a.mil>

11/26/2002 11:30 AM

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>  
cc: "Barco, Vincent" <VBarco@dcmdi.dcm  
a.mil>  
Subject: FW: Proposed FAR change request for comments - Contract Closeout  
rules

Re: ANPR Contract Closeout

In response to your request for comments on how on how the Federal Acquisition Regulation (FAR), Defense FAR Supplement (DFARS), and General Services Administration Acquisition Regulation (GSAR) can be revised to facilitate timely contract closeout, the following changes have been proposed by personnel at DCMA Europe:

Property:

As disposition of government property is one of the most frequent hold ups to timely contract closeout, it is recommended that consideration be given to allowing the issuance of property only contracts to hold GFP which is not yet ready to be dispositioned or transferred. While some regulations regarding how long property should be allowed to remain on such a contract would be appropriate, some leeway would promote more efficient closeout. Situations in which the CMO must wait for a follow on contract to be issued prior to transfer of property or excessively long waits for PCOs to provide disposition instructions would no longer require that the CMOs hold up contract closeout.

Another possibility would be to allow property to be accountable to a contractor rather than an individual contract when appropriate.

Reconciliation/Payment:

While negotiated settlement was approved by DCMA, its implemtation has been hindered by accounting stations which are unwilling or unable to free DFAS to make the necessary changes to the financial records. A change in the regulations which allows and requires accounting stations to adjust their records in accordance with the negotiated settlement would make this a more viable process.

\*\*\*\*\*  
\* New Organization -- Defense Procurement and Acquisition Policy Office  
\*\*\*\*\*

Effective 1 October 2002, as part of the USD(AT&L) Defense Planning Guidance Flow-Down Implementation Plan, the Defense Procurement and Acquisition Initiatives offices merged into one organization called the Defense Procurement and Acquisition Policy Office. Ms. Deidre Lee is the Director for the office and Ms. Donna Richbourg is dual-hatted as the Principal Deputy and as the Deputy Director for Acquisition Workforce Management and Training. Click here for the new organization's website (currently under construction): <http://www.acq.osd.mil/dpap>.

AI NOW is an electronic mail tip sheet from the Defense Procurement and Acquisition Policy office designed to give you a "heads-up" on important acquisition-related events and activities. It is sent via your email. If you have comments, questions or contributions, or wish to not receive this in the future, send an email to [ai@dau.mil](mailto:ai@dau.mil)



"Street, Diane L  
SBCCOM"  
<diane.street@us.army  
.mil>

11/26/2002 08:55 AM

To: "ANPR.contractcloseout@gsa.gov"  
<ANPR.contractcloseout@gsa.gov>

cc: "Longo, Dennis P SBCCOM"  
<dennis.longo@SBCCOM.APGEA.ARMY.MIL>, "Plummer, Gary L  
SBCCOM" <gary.plummer@SBCCOM.APGEA.ARMY.MIL>

Subject: ANPR Contract Close Out

Cost Reimbursement Contracts are typically the types of contracts which are not closed out within the required timeframes. Closeouts are not completed for these contracts mostly as result of delays in finalizing negotiated overhead rates. Some how the audit agencies (DCAA...) need to streamline their processes to reduce the time it takes to finalize the rates and or make them a higher priority. Lack of resources is another reason for the delays. Consideration should be made to contract out for these services. FAR 42.708, Quick Closeouts, procedures, which are very limited, should be revised/expanded to allow more flexibility and use. Additionally, expired funds which were previously used to fund contract closeout ("M" accounts) are no longer available after 5 years. As a result, the Contracting Officer has to obtain new funds, from current or supplemental appropriations, to pay the contractor any amounts due on the contract.

Diane Street  
Contracting Officer  
US Army Robert Morris Acquisition Center  
APG, MD 21010-5424

ANPR-21



TO: FAR/DFARS Ad Hoc Committee

22  
7 APR-22

Provisions: The Contract Disputes Act has a **6 year Statute of Limitations** from the accrual of the claim date. Recommend that the statute of limitation for submission of a claim be **shortened to 3 years**.

Reasons for Recommendation:

1. Reduces the risk associated with closeout by shortening claim period.
2. Reduces time needed to store contracts in archive subject to recall for potential claims.
3. Increases the chances of availability of personnel and records relating to the claim. Records should be in much better conditions (ie documents stick, fade, and ink entries defuse, etc)
4. Promotes faster resolution of disputes by the parties with first hand knowledge of the circumstances.

**FAR 52.233 -- Protests, Disputes, and Appeals Provisions and Clauses.**

**52.233-1 - Disputes.**

As prescribed in 33.215, insert the following clause:

**Disputes (July 2002)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)
- (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within **6 years** after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

An PR 22  
11/11

OTHER REFERENCES THAT MAY BE IMPACTED:

- Contract Disputes Act, 41 U.S.C. 605(a),
- Disputes and Appeals, FAR subpart 33.2,
- Disputes clause, FAR 52.233-1,
- Noncompliances with CAS requirements, FAR 30.602-2
- Cost Accounting Standards clause, FAR 52.230-2
- Administration of CAS, FAR 52.230-6

***Samuel Davis***

***Ofc: 703-428-0991***

***Fax: 703-428-1368***

***MOCAS Transition Assistance Center***

ANPR-23



"Cohen, Steven, Mr,  
OSD-ATL"  
<Steven.Cohen@osd.  
mil>

To: "'Larhonda.erby@gsa.gov'" <Larhonda.erby@gsa.gov>  
cc:  
Subject: Additional Comments on Contract Closeout

01/29/2003 02:31 PM

LaRhonda,

Here are the items for the closeout case I mentioned earlier this afternoon. The attachments above are all part of a single submission from Boeing. They were sent to me by Pat Janik, who is the new Chairwoman of the Ad Hoc Committee. I am also pasting the comment from Nayda Katzaman, who sent it directly to Rick Layser. I suggest Nayda's comment be numbered ANPR-23 and the Boeing set ANPR-24. Please let me know if this is OK with you or if you need more information. Thank you very much for all of your help.

Very

Respectfully,

Steve

Cohen

-----Original Message-----

**From:** katzaman, nayda [mailto:nkatzaman@hq.dema.mil]

**Sent:** Tuesday, December 24, 2002 10:15 AM

**To:** Layser, Richard, Mr, OSD-ATL

**Cc:** janik, pat; hill, vivian

**Subject:** ANPR Contract Closeout

Rick,

In response to ANPR published in the Federal Register on September 24, 2002, I suggest FAR 32.704, Limitation of costs or funds and DFAR 232.704-70, Incrementally funded

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fixed-price contracts, be revised to include a specific time frame for the contracting officer to respond to the contractor's notice. "Contracts awaiting additional funds" is one of the events that hinders closeout. Changing "promptly" to a specific number of days could go a long way in improving the cycle time in obtaining additional funds.

Please let me know if you have any questions or need additional information.

Regards,

Nayda Katzaman  
Contract Specialist  
DCMA MOCAS Transition Assistance Center  
Comm (703) 428-0992 DSN 328-0992

-----Original Message-----

From: janik, pat [mailto:pjanik@hq.dcma.mil]

Sent: Tuesday, January 28, 2003 8:55 AM

To: 'Steve Cohen'

Subject: FW: Action Items from Boeing Joint Leadership Council (JLC)

Steve,

Attached are comments from the DCMA/Boeing task force with recommend changes

to the FAR and DFARS. The first 5 files deal with patent and the last 3 deal with waiver of debt. Please forward on to GSA. Thanks

Patricia Janik

DCMA MOCAS Transition Assistance Center

703-428-0986

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pat.janik@dcma.mil

These recommended changes have been coordinated with Boeing members of the DCMA/Boeing Payment Task Force, whose purpose is to improve the efficiency and effectiveness of the payment and contract closeout processes. We would appreciate it if you could review these materials. Please provide feedback on the progress of these materials through the process of, hopefully, becoming FAR changes. We appreciate the opportunity to contribute to the improvement of the FAR and DFARS and to the timeliness of the contract closeout process.

<<Interim patent reporting elimination.doc>> <<(1)FAR 52.227-12&13, Patent

Rights.doc>> <<(2)FAR 52.227-12&13, Patent Rights.doc>> <<General FAR

Patent Coverage.doc>> <<DFARS Patent coverage.doc>>

<<ACO waiver of debt.doc>> <<FAR 32.6 Contract Debts.doc>>

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<<DFARS

232.616 Compromise Actions.doc>>

Paul A. Karkainen

Chief, Technical Assessment Group

DCMA Boeing Seattle, DCMAW-RBT

Phone: (253) 773-7222

Email: [pkarkainen@dcmdw.dcmamil](mailto:pkarkainen@dcmdw.dcmamil)



- Interim patent reporting elimination.doc



- (1)FAR 52.227-12&13, Patent Rights.doc



- (2)FAR 52.227-12&13, Patent Rights.doc



- General FAR Patent Coverage.doc



- DFARS Patent coverage.doc



- ACO waiver of debt.doc



- FAR 32.6 Contract Debts.doc



- DFARS 232.616 Compromise Actions.doc

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Interim patent reporting places an undue burden on contractors, contracting officers and Government patent personnel. FAR 52.227-12 and 52.227-13, the two patent rights clauses that require interim reporting, set forth specific requirements for contractors to track and promptly disclose to the Government all inventions and all subcontracts containing a patent rights clause. Then, in addition to requiring the contractor to submit a final report of all inventions and subcontracts with patent rights clauses within 3 months after completion of the contracted work, the clause also requires the contractor to submit annual interim reports listing all inventions for the period or stating there were none. This proliferation of reporting is duplicative and unnecessary and creates an administrative burden for both the parties that generate and those that review the interim reports. Given that the majority of interim reports are negative, indicating no reportable activity, eliminating these reports would result in significant savings in resources while posing little or no risk to the Government. The clauses themselves and the final report should be sufficient to protect the Government's interests.

In addition, while the FAR does not explicitly require written approval of final patent reports, both FAR clauses cited above state that final contract payment shall not be made until the contractor submits "an acceptable final report" to the contracting officer and FAR 4.804-5(2) requires that the final patent report be "cleared" before the contract is closed. In practice, the administrative contracting officer waits for the patent office at the buying activity to submit a letter granting patent clearance before approving the final invoice or voucher and closing the contract. Lengthy delays in receiving this clearance, especially on old, overage contracts, adversely affect the closure process. Therefore, it is recommended that constructive acceptance occur within 60 days of submission of the final patent report by the ACO unless written disapproval is received prior to that time.

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52.227-12 -- Patent Rights -- Retention by the Contractor (Long Form).

As prescribed at 27.303(b), insert the following clause:

Patent Rights -- Retention by the Contractor (Long Form) (Jan 1997)

(a) *Definitions.* "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C.2321, et seq.).

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of



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determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.*

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

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(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; provided, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention

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- (1) If the Contractor elects not to retain title to a subject invention;
- (2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request

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title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the time specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.*

(1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or

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the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to --

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject

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invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall

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furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

~~(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.~~

~~(ii) A final a report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.~~

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Contractor —

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(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.*

(1) The Contractor shall include the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract

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between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an



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assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that --

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* [Reserved]

(l) *Communications.* [Complete according to agency instructions.]

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.*

- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether --

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- (i) Any such inventions are subject inventions;
- (ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and
- (iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to --

- (i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above; or

~~(iii) Deliver acceptable interim reports pursuant to subdivision~~

~~(f)(7)(i) above; or~~

~~(iv)~~ (iii) Provide the information regarding subcontracts pursuant to subparagraph (f)(8) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (c)(1) above, an acceptable ~~final~~ report pursuant to subdivision (f)(7)~~(ii)~~ above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of Clause)

*Alternate I (Jun 1989).* As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: \_\_\_\_\_ \*

*[\* Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended*

*to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

*Alternate II (Jun 1989).* As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreement with respect to subject inventions made after the date of the amendment.

#### 52.227-13 -- Patent Rights -- Acquisition by the Government.

As prescribed at 27.303(c), insert the following clause:

##### Patent Rights -- Acquisition by the Government (Jan 1997)

(a) *Definitions.* "Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocations of principal rights --*

(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.

(2) *Greater rights determinations.*

(i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304-1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.*

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(1) With respect to each subject invention to which the Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that --

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause ~~has~~ neither been

obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with subdivision (c)(1)(ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (I) above in any instrument

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transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the



funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Government elects not to secure a patent, subject to the Government's rights in subparagraph (c)(1) of this clause.

*(e) Invention identification, disclosures, and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

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(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

~~(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (c)(1) of this section have been followed.~~

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to FAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether --

- (i) Any such inventions are subject inventions;
- (ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and
- (iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

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(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to --

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(ii) Disclose any subject invention pursuant to subparagraph (e)(2) above; or

~~(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or~~

~~(iv)~~ (iii) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and an acceptable final report pursuant to subdivision ~~(e)(3)(ii)~~ above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being

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withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.*

(1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor --

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

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(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of Clause)

*Alternate I (Jun 1989).* As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: \_\_\_\_\_ \*

*[\* Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

*Alternate II (Jun 1989).* As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract, and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international

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organizations under such treaties or international agreements with respect to  
subject inventions made after the date of the amendment.

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52.227-12 -- Patent Rights -- Retention by the Contractor (Long Form).

As prescribed at 27.303(b), insert the following clause:

Patent Rights -- Retention by the Contractor (Long Form) (Jan 1997)

(a) *Definitions.* "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C.2321, et seq.).

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of



determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.*

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

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(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; provided, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention

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- (1) If the Contractor elects not to retain title to a subject invention;
- (2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request

title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the time specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.*

(1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or

the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to --

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject

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invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall

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furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

~~(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.~~

~~(ii) A final a report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.~~

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in ~~sub~~paragraph (g)(1) or (2) below, the Contractor --

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(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.*

(1) The Contractor shall include the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract



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between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an



assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that --

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* [Reserved]

(l) *Communications.* [Complete according to agency instructions.]

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.*

- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether --

- (i) Any such inventions are subject inventions;
- (ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and
- (iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to --

- (i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

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(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above; or

~~(iii) Deliver acceptable interim reports pursuant to subdivision~~

~~(f)(7)(i) above; or~~

(iv) (iii) Provide the information regarding subcontracts pursuant to subparagraph (f)(8) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (c)(1) above, an acceptable final report pursuant to subdivision (f)(7)(~~ii~~) above, and all past due confirmatory instruments. The report will be considered acceptable if not disapproved by the Government within 60 days of submission.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of Clause)

*Alternate I (Jun 1989).* As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: \_\_\_\_\_ \*

*[\* Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended*